



ID# 1391
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COURT REPORTERS CERTIFICATION BOARD

3000 S. IH-35, SUITE 120
P.O. Box 13131, Capitol Station
Austin, Texas 78711-3131
512/463-1630

Executive Secretary
PEG LIEDTKE

July 26, 1991

RQ-138

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Opinion Committee

Mr. Rick Gilpin
Chairman, Opinions Committee
Office of the Attorney General
Post Office Box 12548, Capitol Station
Austin, Texas 78711-2548

Reference: Does Senate Bill 884, which became law on June
16, 1991, apply to the Court Reporters
Certification Board?

Dear Mr. Gilpin:

The Texas Court Reporters Certification Board hereby submits its opinion request on the above captioned issue. Senate Bill 884, relating to the creation, powers, and duties of the State Office of Administrative Hearings, and the requirements for certain administrative hearings, was passed during the 72nd Legislative Session. A copy is attached.

We respectfully ask for an opinion on whether this statute applies to the Texas Court Reporters Certification Board effective September 1, 1991.

Thank you for your consideration.

Sincerely,

Merrill L. Hartman, Chairman
Court Reporters Certification Board

enclosure

cc: Ms. Molly Shannon
Assistant Attorney General
Office of the Attorney General
IH-35 Building
1125 S. IH-35, 3rd Floor
Austin, Texas

ACCOMPANIED BY ENCLOSURES —
FILED SEPARATELY

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ENGROSSED

By: Montford

S.B. No. 884

A BILL TO BE ENTITLED

AN ACT

relating to the creation, powers, and duties of the State Office of Administrative Hearings, and to the requirements for certain administrative hearings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Administrative law judge" means a person who presides at an administrative hearing held under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(2) "Office" means the State Office of Administrative Hearings.

(3) "State agency" means a state board, commission, department, or other agency that is subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 2. STATE OFFICE OF ADMINISTRATIVE HEARINGS; CHIEF ADMINISTRATIVE LAW JUDGE. (a) The State Office of Administrative Hearings is a state agency under the direction of a chief administrative law judge appointed by the governor for a two-year term. To be eligible for appointment as chief administrative law judge, a person must be licensed to practice law in this state and must have at least five years' experience in conducting administrative hearings under the Administrative Procedure and

1 Texas Register Act (Article 6252-13a, Vernon's Texas Civil
2 Statutes).

3 (b) The office shall conduct all administrative hearings in
4 contested cases under the Administrative Procedure and Texas
5 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) that
6 are before an agency that does not employ a person whose only duty
7 is to preside as a hearings officer over matters related to
8 contested cases before the agency.

9 SECTION 2. ADMINISTRATIVE LAW JUDGES; STAFF. (a) The chief
10 administrative law judge shall employ and maintain a staff of
11 administrative law judges to conduct hearings for state agencies
12 subject to this Act.

13 (b) To be eligible for employment with the office as an
14 administrative law judge, a person must be licensed to practice law
15 in this state and meet other requirements prescribed by the chief
16 administrative law judge. An administrative law judge may:

- 17 (1) administer oaths;
18 (2) take testimony;
19 (3) rule on questions of evidence;
20 (4) issue orders relating to discovery and other
21 hearing or prehearing matters, including orders imposing sanctions
22 that the agency that the contested case is before may impose,
23 subject to review by the agency; and
24 (5) issue proposals for decision that include findings
25 of fact and conclusions of law.

1 (c) If administrative law judges employed by the office are
2 not available to hear all cases within reasonable times, the chief
3 administrative law judge may contract with qualified individuals to
4 serve as temporary administrative law judges. The chief
5 administrative law judge shall adopt rules relating to the
6 qualification requirements for temporary judges.

7 (d) The chief administrative law judge may hire other staff
8 as required to perform the powers and duties of the office.

9 SECTION 4. ADMINISTRATION OF OFFICE; CENTRAL HEARINGS PANEL.

10 The office has an administrative division that oversees the
11 training, evaluation, discipline, and promotion of all
12 administrative law judges employed by the office. The office also
13 has a central hearings panel composed of six senior administrative
14 law judges appointed by the chief administrative law judge. Under
15 the direction of the chief administrative law judge, the central
16 panel shall coordinate and supervise the operation of
17 administrative hearings conducted by the office.

18 SECTION 5. CONFORMING AMENDMENTS. (a) Subdivision (1),
19 Section 3, Administrative Procedure and Texas Register Act (Article
20 6252-13a, Vernon's Texas Civil Statutes), is amended to read as
21 follows:

22 (1) "Agency" means any state board, commission,
23 department, or officer having statewide jurisdiction, other than an
24 agency wholly financed by federal funds, the legislature, the
25 courts, the Texas Workers' Compensation Commission, and

1 institutions of higher education, that makes rules or determines
2 contested cases. For the purpose of determining contested cases,
3 the term includes the State Office of Administrative Hearings.

4 (b) Section 13, Administrative Procedure and Texas Register
5 Act (Article 6252-13a, Vernon's Texas Civil Statutes), is amended
6 by adding Subsection (j) to read as follows:

7 (j) This subsection applies only to an administrative law
8 judge employed by the State Office of Administrative Hearings. The
9 administrative law judge who conducts the hearing shall consider
10 any applicable agency rules or policies in conducting the hearing,
11 but may not be supervised by the agency that the contested case is
12 before. The agency shall provide the administrative law judge with
13 a written statement of applicable rules or policies. An agency may
14 not attempt to influence the finding of facts or the administrative
15 law judge's application of the law in any contested case other than
16 by proper evidence and legal argument. An agency may change a
17 finding of fact or conclusion of law made by the administrative law
18 judge or vacate or modify an order issued by the administrative law
19 judge only for reasons of policy and must state in writing the
20 reason and legal basis for the change.

21 SECTION 6. EFFECTIVE DATE. (a) This Act takes effect
22 September 1, 1991.

23 (b) The State Office of Administrative Hearings shall begin
24 to conduct hearings on contested cases brought before that office
25 not later than January 1, 1992.

1 (c) The legislature shall provide for the review of all
2 state agencies that are not covered by Subsection (b) of Section 2
3 of this Act to determine whether hearings conducted by those
4 agencies --should be conducted by the office. The review of an
5 agency shall include a consideration of the costs of hearings at
6 the agency, the independence of a hearings officer at the agency,
7 and the quality of hearings conducted at the agency. The review of
8 each agency covered by this subsection shall be completed not later
9 than September 1, 1993.

10 SECTION 7. EMERGENCY. The importance of this legislation
11 and the crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby suspended.

Austin, Texas

FISCAL NOTE

April 9, 1991

TO: Honorable Bob Glasgow, Chairman
Committee on State Affairs
Senate Chamber
Austin, Texas

IN RE: Committee Substitute for
Senate Bill No. 884

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Committee Substitute for Senate Bill No. 884 (relating to the creation, powers, and duties of the State Office of Administrative Hearings, and to the requirements for certain administrative hearings) this office has determined the following:

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill could create the State Office of Administrative Hearings. The Office would conduct all administrative hearings in contested cases that are before a state agency that does not employ an individual in a full-time hearings officer capacity.

The state would likely realize a savings with respect to those agencies which contract for hearings examiners services. The savings would be a function of the difference between the contract price of outside hearings examiners and salaried administrative law judges. The amount of the potential savings cannot be determined.

With respect to those state agencies which present contested cases to the agency's full board or commission, the fiscal implication of the bill would be dependent on the amount of time the respective boards and commissions spend to consider and review the determinations of the administrative law judge; however, the fiscal implication with respect to these agencies is not anticipated to be significant.

No fiscal implication to the State or units of local government is anticipated.

Source: Comptroller of Public Accounts, Office of the Attorney General
LBB Staff: JO, JWH, DF, PA

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Austin, Texas

FISCAL NOTE

April 8, 1991

TO: Honorable Bob Glasgow, Chairman IN RE: Senate Bill No. 884
Committee on State Affairs By: Montford
Senate Chamber
Austin, Texas

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on Senate Bill No. 884 (relating to the creation, powers, and duties of the State Office of Administrative Hearings, and to the requirements for certain administrative hearings) this office has determined the following:

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No fiscal implication to the State or units of local government is anticipated.

Source: Comptroller of Public Accounts, Office of the Attorney General
LBB Staff: JO, JWH, DF, AW

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